

amounts: \$12,329.43 as the unpaid principal balance as of September 8, 2004; \$13.84 as the unpaid interest on the principal balance at 5.0% per annum through September 8, 2004; and interest on said principal balance from September 9, 2004 at 5.0% per annum until paid. (Dillon Decl., ¶ 4).

A Due Process Notice dated October 5, 1998, informing Petitioner of HUD's intent to collect the debt by IRS Tax Refund Offset, was sent to Petitioner. (Secy. Stat., ¶ 5; Dillon Decl., ¶ 5). Petitioner filed a request for a hearing that was docketed with this Board on November 10, 1998. (Dillon Decl., ¶ 6). In his request, Petitioner stated that he believed the debt claimed by the Secretary was not legally enforceable against him because: "(1) he believed the foreclosure sale of the property settled Petitioner's obligation to HUD; (2) his separated wife failed to accept her share of the mortgage payment responsibility; and (3) [because of] financial hardship. (Petitioner's Letter dated November 9, 1998). On February 3, 2000, this Board issued a Decision and Order in Edgar L. Joyner, Sr., HUDBCA No. 99-A-SE-Y118 (2000), which found that the debt at issue was "legally enforceable against Petitioner in the amount claimed by the Secretary." (Dillon Decl., Exh. A).

Petitioner's delinquent account was returned to the Treasury Offset Program on January 31, 2000. (Dillon Decl., ¶ 7). HUD is currently receiving monthly offsets in the amount of \$339.76 from Petitioner. (Dillon Decl., ¶ 8). A Demand Notice dated June 9, 2004, was sent to Petitioner, Edgar Joyner, Sr. (Petitioner's letter dated August 17, 2004, hereinafter "Pet. Aug. 17th Ltr.," unmarked attachment). A Notice of [HUD's] Intent To Collect By Treasury Offset, dated June 14, 2004, was also sent to Petitioner and Petitioner thereafter requested this hearing pursuant to 24 C.F.R. §§ 17.152 and 17.153. (Pet. Aug. 17th Ltr., unmarked attachment).

Discussion

On October 8, 2004, the Secretary filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute the existence of the debt or that it is delinquent, but Petitioner contests the amount and enforceability of the debt. Petitioner sets forth several new arguments and documentary evidence which were not presented during the previous proceeding on this matter.

Petitioner first contends that the amount claimed by the Secretary is inaccurate. Petitioner alleges that he made two payments to HUD in the amount of \$270.63 and \$3,030.25, for a total of \$3,300.88, but HUD has not credited his account for these payments. (Petitioner's Reply To Secy. Stat., hereinafter "Pet. Reply to Secy. Stat.," ¶ I). Petitioner argues that because HUD has neglected to credit his account for these alleged payments, he does not owe \$12,329.43 as claimed by the Secretary. Id. Petitioner states: "Secretary repeatedly ... has not revealed that my several payments of totally more than \$3000 [have been credited to] my account. Balance of unpaid [sic] principal as \$12.329.43 [sic] is inaccurate and overpayment [sic]." Id. (capitalization in original removed).

Petitioner claims further that he has tax documents from 1994 and 1995 that show that he made payments to HUD in the amount of \$270.63 and \$3,030.25 and that, as a result of these payments, the balance on his account should be \$9,028.55. (Pet. Reply to Secy. Stat., ¶ II). Petitioner states: “I can [prove to] you that two return document [s for] tax years (1994 and 1995). That showing my several payments made to Secretary \$270.63 and [\$] 3,030.25 as total \$3300.88. Secretary [has failed to] credit my account. Balance of \$9,028.55 should be accurate.” *Id.* (capitalization in original removed).

The “tax documents” submitted by Petitioner only show that in 1994 Petitioner paid \$270.63 in interest on his mortgage, and in 1995 Petitioner paid \$3,030.25 in interest on his mortgage. (Pet. Reply to Secy. Stat., unmarked attachments). These interest payments were not payments made to HUD to satisfy Petitioner’s delinquent debt which had an unpaid principal balance of \$12,329.43 as of September 8, 2004. (Dillon Decl., ¶ 4). Moreover, there is no evidence that Petitioner’s loan was in default in 1994 and 1995 when these documents were issued. (See Dillon Decl., Exh. A, Decision and Order in *Edgar L. Joyner, Sr.*, HUDBCA No. 99-A-SE-Y118 (2000)). The record shows that the only payments credited to Petitioner’s account are those received from the Treasury Offset Program since 2000 in the amount of \$339.76. (Dillon Decl., ¶ 8). Therefore, without further documentary evidence from Petitioner which would prove that the amount requested by the Secretary is inaccurate, Petitioner’s claim fails for lack of proof.

Petitioner also argues that he was not aware that he was also responsible for unpaid interest on the principal balance because he was not provided with regular statements from the Secretary. (Pet. Reply to Secy. Stat., ¶ III). Petitioner states:

I know nothing about amount as any unpaid interest on principal at 5.00% per annum until paid because Secretary never issue regulary [sic] disclosed statements direct to me since May, 2000 my pension garnished by Treasury. Secretary supposed [to] do his job such properly send me regular statements each months [sic].... *Id.* (capitalization in original removed).

The note signed by Petitioner on November 22, 1994 specifically states:

4. BORROWER’S FAILURE TO PAY AS REQUIRED

(C) Default

If I do not pay the overdue amount by the date stated in the notice...I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. (emphasis added).

(Secy. Stat., unmarked exhibit).

Furthermore, Petitioner was sent a Demand Notice from HUD, dated June 9, 2004, which states:

As of 05/31/04, you owe the total amount of \$13,779.52, which consists of \$13,779.52 principal and \$0.00 interest and \$0.00 other charges. Interest will be added monthly to the unpaid principal amount at the rate of 5.000% per year until your account is paid in full. (emphasis added).

(Pet. Aug. 17th Ltr., unmarked attachment).

Petitioner signed the note voluntarily and is obligated to comply with its terms. Petitioner has failed to cite any legal authority or language in the note that requires the Secretary to issue monthly statements to Petitioner regarding the status of his account. Nor does Petitioner's ignorance of the lawful interest applied to the outstanding principal relieve Petitioner of his obligation to pay the principal due on the loan as well as for all the interest which has accrued.

Petitioner alleges that he has no knowledge of the Declaration of Brian Dillon which was attached as Exhibit A to the Secretary's Statement dated October 8, 2004, because "[i]t [was] sent direct [ly] to my son on a Due Process Notice dated October 5, 1998, not direct [ly] to me.... Secretary sen[t] it to [the] wrong person because [my son is] not involved in buying this house.... (Pet. Reply to Secy. Stat., ¶ IV). (capitalization in original removed). Petitioner appears to be confusing the Declaration of Brian Dillon and the Due Process Notice which are two separate documents. The Declaration of Brian Dillon is included as an exhibit attached to the Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable. The Due Process Notice gave Petitioner notice that HUD intended to collect by administrative offset a debt in a specified amount and set forth Petitioner's rights and obligations with respect to repayment of the debt.

Petitioner contends that there was an original Due Process Notice regarding the subject debt dated October 5, 1998 that was sent to Petitioner's son, Edgar Joyner, Jr., instead of Petitioner himself. The facts would suggest otherwise since Petitioner requested and received a review of this debt by the Board at that time in Edward L. Joyner, Sr., HUDBCA No. 99-A-SE-Y118 (2000). In any event, the record shows that a Demand Notice dated June 9, 2004 as well as a Notice Of Intent To Collect By Treasury Offset ("Notice of Intent") dated June 14, 2004 were sent to Petitioner, Edgar Joyner, Sr., at P.O. Box 8959 Anaheim, CA 92812-8959, both of which relate to this current proceeding. (See Pet. Aug. 17th Ltr., Unmarked Attachments). Petitioner does not allege that he did not receive the Demand Notice or the Notice of Intent. Therefore, Petitioner cannot, in good faith, claim that he did not have knowledge of this debt.

Petitioner also claims that he has no knowledge of the Declaration of Brian Dillon which was attached as Exhibit A to the Secretary's Statement dated October 8, 2004. However, there is evidence in the record that shows that Petitioner filed a response to the Secretary's Statement. (See Pet. Reply to Secy. Stat. filed November 12, 2004). If Petitioner received a copy of the Secretary's Statement, it is a reasonable presumption that Petitioner also received a copy of the Declaration of Brian Dillon which was attached to that document as an exhibit. Even if he did not receive this exhibit, there is no legal

basis for Petitioner's contention that failure to receive a copy of the Declaration of Brian Dillon relieves Petitioner of his obligation to pay a debt owed to HUD.

Petitioner further alleges that he did not receive the Decision and Order issued by this Board on February 3, 2000 because he "was homeless since February 17-19, 1999 until October 14, 1999 [and the notice was not even] sent to [his] son's address.... (Pet. Reply to Secy. Stat., ¶ V). (capitalization in original removed). Petitioner claims that he received a copy of the Decision and Order for the first time on September 27, 2004, the date of his reply. Id. Even if Petitioner's contention that he did not receive until September 27, 2004 a copy of the Board's Decision and Order in Edgar L. Joyner, Sr., issued on February 3, 2000 were accepted as true, that fact would not relieve Petitioner of his obligation to repay the debt which was found to be past due and legally enforceable.

Petitioner also claims that he is unable to pay the debt due to financial hardship. In his letter dated July 1, 2004, Petitioner states the following:

Dept [sic] Of the Treasury still deducts money from my Federal retirement check ... since May, 2000 thru [sic] this present time that killing my only income because [the offset] deduct [s] too [much] monthly from my pension, wiped out my investment as extra incomes [sic]. Pay \$799 on rent payment, \$91.00 on franchise tax and between \$369 to [\$] 383 on HUD from May, 2000 thru [sic] Jan, 2004 before down to \$339.76 from Feb [sic] , 2004 thru [sic] present time while my income reduce [d] from \$1517.17 [a month] to [\$] 1359.05 [a month] because ... my age reached 62 on Feb [sic].

(Letter from Petitioner dated July 1, 2004, hereinafter "Pet. July 1st Ltr.").

Petitioner contends further that his financial difficulties also stem from the fact that he was suffering from depression from 1997 through 1999 due to marital problems and as a result, was unable to concentrate and focus. (Pet. Reply to Secy. Stat., ¶ VI). Petitioner states that due to his depression, he retired early on July 31, 1997 instead of on December 31, 1997. Id. Petitioner submits that his lack of concentration and focus, which was a result of his depression, caused him to fall behind on bill payments and eventually to be evicted and become homeless. Id. Petitioner states:

I was unable to read clear and focus very well [on] everything ... [and the] situation [was] complicated [at the] time [by a] ... corrupt marriage, spouse repeatedly hamper [sic] bill payments, my children apart, foreclosure, eviction (August 1998), IRS, Secretary and [in] court for other summon [s] from landlord (February 17-19, 1999) cause [d] me [to] became [sic] homeless.... My problem of the depress [sic] emotions compelled me [to] retired [sic] early [on] July 31,

1997 instead of December 31, 1997. Id. (capitalization in original removed).

Although Petitioner may have suffered extreme financial hardship as stated above, this Board must determine whether, as a matter of law, this debt is legally enforceable against Petitioner. Unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is legally enforceable. Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996). Petitioner cited no legal authority which would support a finding that this debt is not legally enforceable against Petitioner due to an alleged mental incapacity which Petitioner may have suffered during all relevant times.

Petitioner argues that he unwillingly agreed to a settlement arrangement regarding payment of the debt claimed by the Secretary because the Secretary was not willing to take into consideration his financial situation, his alleged mental infirmity, or his hearing and speech impediments, and negotiate a more manageable payment schedule with him. (Pet. Reply to Secy. Stat., ¶ VII). Petitioner states:

[In my] two letters to [the] Scretary [sic] [I] stated [that I] ... suffer [from] depression ... and [that I am] physical [ly] impaired [.] [I] refer [red] to my hearing and speech [problems] and [I explained that I am] struggling financial [ly] ... [I] request [ed] [that the Secretary] reduce [the] amount [of my monthly] payment [s] ... [because I was] ... unable [to] pay [because the payments were] too high ... after [I] retired [in] July, 1997 with [a] one pension income [and] without [being able to] depend on [any] extra investment income [.] [I] just found rent [al] [housing] [in] October, 1999 ... [and I am] living alone after being homeless from February, 1999 thru [sic] October, 1999 [.] [I] asked the Secretary] to give [me] more time for investing more funds before [I am] able [to] afford payments to [the] Secretary [per the] arrangement as discussion [sic].... [The] Secretary [‘s] repeated [sic] regligent [sic] of my problems and [my] effort [s] [to] negotiate [a] payment arrangement [led to an] impossible settlement. Id. (capitalization in original removed).

There is no evidence in the record of this proceeding that Petitioner entered into an agreement with the Secretary for repaying this debt. After unsuccessful attempts by the Secretary to collect on the defaulted note from Petitioner, “Petitioner’s delinquent account was returned to the Treasury Offset Program on January 31, 2000 [and] HUD is currently receiving monthly offsets in the amount of \$339.76 from Petitioner.” (Dillon Decl., ¶¶ 7-8). The Secretary is not prohibited from attempting to collect this legally enforceable, delinquent debt by means of administrative offset because of Petitioner’s alleged financial hardship. See Anna Filiziana.

Petitioner also challenges the enforceability of the debt based on the fact that the Secretary chose to pursue Petitioner for the debt instead of his estranged wife who is a co-signer on the original note. Petitioner claims that the “Secretary never [pursued] her because of her gender.” (Pet. Reply to Secy. Stat., ¶ VIII). (capitalization in original removed). Petitioner also contends that HUD illegally collected money for the claimed debt from his son, Edgar Joyner, Jr. Petitioner submits that the “Secretary attempted [to] take away from my son’s income.... Secretary ... attempt [ed] [to] sneak in illegal [ly] [and] takeaway [sic] from my son’s wage [s]....” *Id.* (capitalization in original).

The Secretary’s efforts to collect sums from Petitioner’s son to satisfy this debt are not “illegal.” As a co-signer on the note with his son and former spouse, Petitioner is jointly and severally liable with his son and estranged wife for repayment of the debt. “Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together.” *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). It is well-established law that where several parties are co-signers of a promissory note, the creditor may proceed against any co-signer for repayment of the full amount of the debt. As such, the Secretary may demand full payment of this debt from Petitioner, from his son, or from his estranged wife.

Petitioner claims in his reply that the Secretary encouraged him to file bankruptcy in order to deter him from filing his petition for a hearing with this Board. (See Pet. Reply to Secy. Stat., ¶ IX). Petitioner specifically states, “Secretary’s bad influence ... deter me from petition [ing] ... you by hint [ing] [to] me [to] file Bankruptcy [sic].... Secretary urge me filing [sic] Bankrupt [sic] for beneficial [sic] my financial problems” *Id.* (capitalization in original removed). These claims are immaterial and irrelevant to the issue of the legal enforceability of the debt at issue. In any event, Petitioner requested a Board hearing in this matter and has been provided a hearing by this Board in accordance with 24 C. F. R. §§ 17.152 and 17.153.

Petitioner alleges that the debt is not enforceable because “the past due on [the] account [was] already made up entirely [with] payments from May, 2000 thru [sic] Septemeber 2004....” (Pet. Reply to Secy. Stat., ¶ XI). (capitalization in original removed). As previously stated, Petitioner’s delinquent account was returned to the Treasury Offset Program on January 31, 2000. (Dillon Decl., ¶ 7). HUD is currently receiving monthly offsets in the amount of \$339.76 from Petitioner. *Id.* at ¶ 8. The current balance on Petitioner’s account is \$12,329.43 as the unpaid principal balance as of September 8, 2004; \$13.84 as the unpaid interest on the principal balance at 5.0% per annum through September 8, 2004; and interest on said principal balance from September 9, 2004, at 5.0% per annum until paid. *Id.* at ¶ 4. Petitioner has submitted neither documentary evidence of any additional payments made to HUD which would have paid off the balance on the account nor evidence that the Department’s calculation of the Petitioner’s debt is inaccurate. Therefore, Petitioner’s claim that all or part of the past due balance now claimed by the Secretary has been paid fails for lack of proof.

Petitioner also argues that HUD is requiring him to pay off the loan too early, and, because of this accelerated repayment schedule, his monthly payments are too high. (Pet. Reply to Secy. Stat., ¶ XI). Petitioner states:

The highest payment monthly each as \$339 full amount for pay less more 4 years cut a long-term [sic] of 20 years off under contract as now Secretary handles my account as Federal (HUD) loan program sponsor is too early pay off less 4 years. Too high monthly of \$339 ought [be] reduced to between \$87.80 monthly for more 10 years as total a 20 years long-term [sic]. Id. (capitalization in original removed).

This Board is not authorized to establish either a debtor's repayment amounts or a schedule of payments. The Board's authority in these cases permits only a determination of whether the debt is enforceable and past due, and in what amount. Petitioner has failed to cite any legal authority which would require HUD to give Petitioner twenty years to repay a loan once the loan has gone into default and is in collection status. Petitioner's desire to have a longer period of time to repay this obligation cannot be considered by the Board.

Petitioner has proposed a repayment schedule. Petitioner states that he wants to pay "\$113.33 monthly for 10 years from Dec [sic] 28, 1994 thru [sic] Dec [sic] 2014 as 20 years under contract..." (Pet. July 1st Ltr.). While Petitioner may wish to negotiate repayment terms with the Department, this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Lester J. West, Director HUD Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. A review of Petitioner's financial status may be conducted if Petitioner submits to that HUD office a Title I Financial Statement (HUD Form 56142).

In Petitioner's Reply to the Secretary's Statement, Petitioner cites several decisions by this Board and other case law. (See Pet. Reply to Secy. Stat., ¶ XII). However, Petitioner fails to set forth how any of the holdings in these cited cases support his contention that the debt which the Secretary seeks to collect from him is not past due and not legally enforceable.

ORDER

Upon due consideration, I find that the claim which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner.

The Order imposing the stay of referral of this matter to the Internal Revenue Service or to the U.S. Department of the Treasury for administrative offset is vacated.

David T. Anderson
Administrative Judge

June 15, 2005